

NZCPR RESEARCH BRIEF

Tribal claims: Coming to a beach near you.

If like many of us, you are finding it difficult to understand what is really going on with the coastal claims, you may want to read the following research brief.

“The Marine and Coastal Area (Takutai Moana) Act 2011 acknowledges the importance of the marine and coastal area to all New Zealanders and provides for the recognition of the customary rights of iwi, hapū and whānau in the common marine and coastal area. Public access to the common marine and coastal area is guaranteed by the Act.” (Ministry of Justice).

Under the Marine and Coastal Area Act 2011 tribal groups were able to submit claims for areas of New Zealand’s coastline. To date, there are 385 Crown Engagement applications and 202 in the High Court. We have mainly been focussing on the applications submitted to the High Court, as the public has more of a say in these cases.

All of the High Court applications can be seen here on the New Zealand Centre for Political Research’s website [HERE](#).

All Crown Engagement applications can be seen on the Ministry of Justice website [HERE](#).

The current status of the High Court claims is that the first round of case management conferences occurred around New Zealand during May and June 2018. In July 2018, Justice Collins issued a Minute summarising the proceedings which can be viewed [HERE](#), along with the transcripts from the conferences. During the conferences there were a few concerns raised about the role and status of the Attorney-General in the proceedings. Submissions were made during August 2018, and the Attorney-General has since responded to those concerns with a Memorandum stating his position as an interested party in the applications, not necessarily for or against. Justice Collins responded with two brief Minutes calling for any further memoranda to be filed by 8 October 2018 – they can be viewed [HERE](#).

The Attorney-General has identified eight of the older claims, that were lodged in the Maori Land Court under the previous Foreshore and Seabed Act, as priority cases. The case management conferences provided a timetable for each of these claims – more on that later. These claimants are asking for customary marine title and protected customary rights of areas of coastline around New Zealand, so let’s first look at what that means and what rights they would have.

The Ministry of Justice defines customary marine title and protected customary rights as the following:

Customary marine title

Customary marine title recognises the relationship of an iwi, hapū or whānau with a part of the common marine and coastal area. Customary marine title can't be sold and free public access, fishing and other recreational activities are allowed to continue in customary marine title areas.

If your group has customary marine title recognised over an area, it will hold these rights:

- *a Resource Management Act permission right which lets the group say yes or no to activities that need resource consents or permits in the area*
- *a conservation permission right which lets the group say yes or no to certain conservation activities in the area*
- *the right to be notified and consulted when other groups apply for marine mammal watching permits in the area*
- *the right to be consulted about changes to Coastal Policy Statements*
- *a wāhi tapu protection right which lets the group seek recognition of a wāhi tapu and restrict access to the area if this is needed to protect the wāhi tapu*
- *the ownership of minerals other than petroleum, gold, silver and uranium which are found in the area*
- *the interim ownership of taonga tūturu found in the area*
- *the ability to prepare a planning document which sets out the group's objectives and policies for the management of resources in the area*

Protected customary rights

Protected customary rights can be granted for a customary activity like collecting hāngi stones or launching waka in the common marine and coastal area.

If your group has a protected customary right recognised, you don't need resource consent to carry out that activity and local authorities can't grant resource consents for other activities that would have an adverse effect on your protected customary right.

Definitions

First some Maori words and terms that may be used in reference to coastal claims:

Hapu – kinship or family group

Iwi - tribe

Kaitiakitanga – guardianship, trusteeship/trust

Karakia – Maori prayers or incantations

Kokowai – burnt red clay

Manaakitanga – hospitality, generosity

Manawhenua – territorial rights

Mana motuhake – self-determination, independence

Rahui – a form of tapu restricting access to, or use of, an area or resource by unauthorised persons

Takutai moana – foreshore and seabed

Taonga – something valued

Taonga tuturu – Maori artefacts

Te tino rangatiratanga – sovereignty or self-governance

Tikanga – Maori customary values and practices

Wahi tapu - places sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense

Customary activities

Customary activities are actually a bit more than just collecting a few hangi stones or launching a waka. They could also include (but are not limited to): hapu net fishing, line fishing, whitebaiting, hunting for eels and birds, gathering shellfish, edible and aquatic plants, accessing marine areas that have a cultural connection, landing vessels, and making sea passages to fishing grounds, collecting traditional materials including mud, sand, peat, driftwood, pumice, plants, perished mammals, seabirds, rocks, shells and other materials from the area. Basically anything that may be considered a cultural practice of the tribal group.

What could all this mean for me?

Yes, if a tribal group gains a *customary marine title* or *protected customary rights* order, you will still be able to go to the beach and swim, fish, have a picnic, go surfing...unless the area has been declared wahi tapu or there is a rahui.

As defined above, tapu or wahi tapu means a place sacred to Maori in the spiritual or traditional sense, and a rahui is a form of tapu restricting access to a certain area often due to a death or perhaps a need to protect the natural resources – the rahui is usually a temporary measure.

If the tribal groups are awarded customary marine title, they can also apply (under s78 of the Act) to have an area declared wahi tapu, where access for the public may be restricted. Wardens or fishery officers may be appointed to patrol the areas and if you refuse to comply with the wahi tapu, you could be fined up to \$5000. Wahi tapu is a more permanent restriction and the tribal group must apply to have the conditions changed under the Act (s79). You can read the full Marine and Coastal Area Act 2011 [HERE](#).

This becomes a very tricky situation as concepts such as wahi tapu are not really measurable or tangible, and it would be deemed very culturally insensitive to question the level of sacredness. However as you can now see, the powers to declare wahi tapu could have serious consequences for the general public.

The granting of customary marine title or protected customary rights would also have a big impact on businesses in the area that might require a resource consent, as tribal groups would have a say in whether the consent was granted or not. They would also have the right to levy a charge on any commercial user of the coast for access to their area.

How do they go about claiming the coastline?

The applicants can choose to either engage with the Crown (Minister Andrew Little) with regard to their claim or go to the High Court. If they apply to engage with the Crown, the Minister decides if he wants to formally engage with the applicants, then they must work together to determine whether the applicant meets the tests – in other words, whether the group has exclusively used and occupied the area without substantial interruption from 1840

until the present day. The tests are the same in the High Court – there, the Court will decide whether to hear the case, and if so, there will be a hearing in front of a Judge, with the Attorney-General representing the Public, along with any other groups that have lodged *Notices of Appearance* (interested parties).

More about the tests - how do the tribal groups prove that they should be granted customary marine title or protected customary rights?

To prove their title or rights, the tribal group will need to meet certain criteria according to the definitions below from the Act:

51 Meaning of protected customary rights

(1) A protected customary right is a right that—

(a) has been exercised since 1840; and

(b) continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group, whether it continues to be exercised in exactly the same or a similar way, or evolves over time

58 Customary marine title

(1) Customary marine title exists in a specified area of the common marine and coastal area if the applicant group—

(a) holds the specified area in accordance with tikanga; and

(b) has, in relation to the specified area, exclusively used and occupied it from 1840 to the present day without substantial interruption;

How strictly or leniently the Judge is in determining if the groups meet the criteria has been questioned in the first round of case management conferences, and it is hoped that a clear definition will be agreed upon going forward.

Why is the Ngati Porou case in Gisborne being heard at the moment then?

The Ngati Porou claims for 200km of coastline north of Gisborne arose under the Foreshore and Seabed Act, and an agreement was reached in 2008 with the then Labour Government. However, before Ngati Porou could have their evidence tested in the High Court to finalise the deal, the election came along and the Government was changed. The National Government introduced the Marine and Coastal Area Act a few years later, and a special Bill to bring the Ngati Porou deal under the new law is now being heard.

A full run-down on the Ngati Porou case can be seen [HERE](#).

Priority Claims

Let's briefly look at the individual claim areas for the High Court priority cases, since these are potentially the first places to go under the spotlight. Remember also that there will be a number of overlapping claims that may be heard at the same time if they haven't managed to resolve their conflicts through negotiation with each other. Also, Justice Collins has noted that some claims that are not priority may be able to progress their claims just as expeditiously as the priority ones (though he has not gone into more detail). You can read about that in his Minute from 18 July [HERE](#). This Minute also contains further details and dates for the priority claims if you want a more detailed summary. Please note that when you look at the maps below for the claim, look for the red arrow to guide you.

Clarkson & Others, CIV-2011-485-789 (Poronia Hineana Te Rangi Whanau) – see [HERE](#)

This is an application for customary marine title and for a protected customary rights order specifically relating to the conservation of karengo (a type of seaweed).

The first case management conference has now been held, with a second scheduled for **10 May 2019**. Statements of evidence from other interested parties who are not applicants is to be filed and served by **16 January 2019** and a fixture set for two weeks commencing **15 July 2019**.

The claimants are required to serve their evidence on the Attorney-General and those with overlapping applications by 17 October 2018 – at that stage their evidence will be posted on the Ministry of Justice website so interested parties can access it (note – as yet, we haven't seen this evidence).

This claim is in the Porangahau area (from Whangaehu Beach down to Cape Turnagain) on the East Coast of the North Island. You can see it as M 122 in red on the map below. You can also see a number of overlapping claims, the Clarkson application has 6.

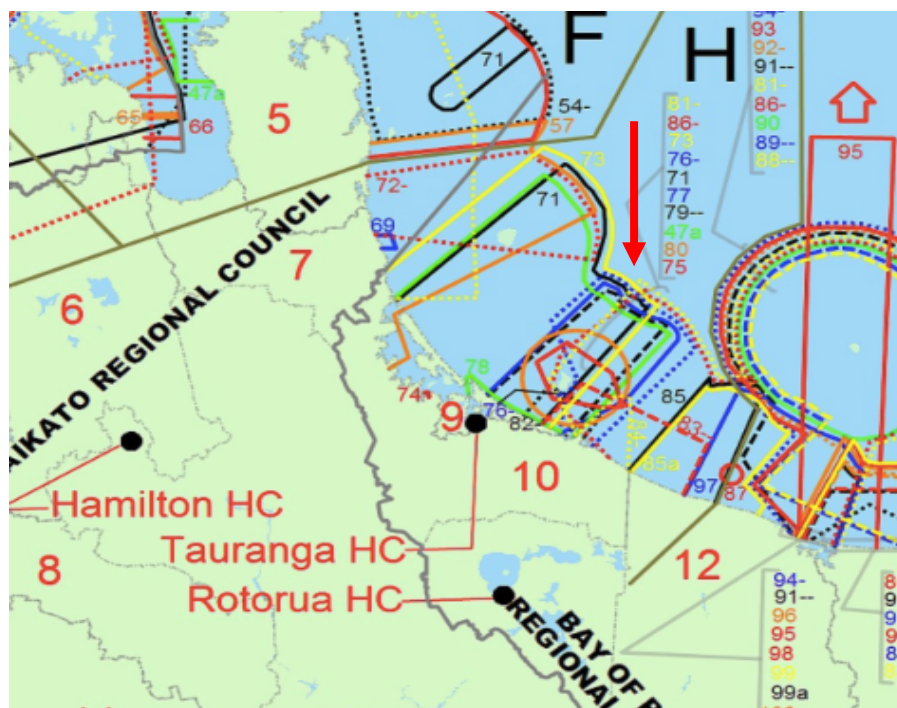


Reeder, CIV-2011-485-793 (Nga Potiki) – see [HERE](#)

This is an application for customary marine title and protected customary rights. This group is applying for orders recognising their protected customary rights for hapu net fishing, line fishing, hunting for eels and birds, gathering/harvesting many species of fish, shellfish, edible and aquatic plants, accessing marine areas that have a cultural connection, landing vessels, and making sea passages to fishing grounds, collecting traditional materials including mud, sand, shingle, aggregate, rocks, stones, plants, perished mammals, seabirds, shells, driftwood, saltwater, pingao (native grass) and other materials from the area. Other protected customary rights for which Nga Potiki seeks recognition include: the exercise of mana, rahui, exercise of customs in relation to wahi tapu areas, non-commercial aquaculture, use of the area for ceremonies, Tauranga waka and other recreational activities.

This application is currently ***adjourned*** while the claim for protected customary rights is negotiated with the Crown. The application to negotiate customary marine title with the Crown was declined, therefore the High Court hearing will just be for customary marine title. There is a second case management conference scheduled in Tauranga on 18 June 2019.

There are 14 overlaps in the area of the Reeder claim which is around the Papamoa Coast near Tauranga (blue H 77 and black dotted line H 79). So as you can see it will be a difficult job proving that this one tribal group has had exclusive use of the area!

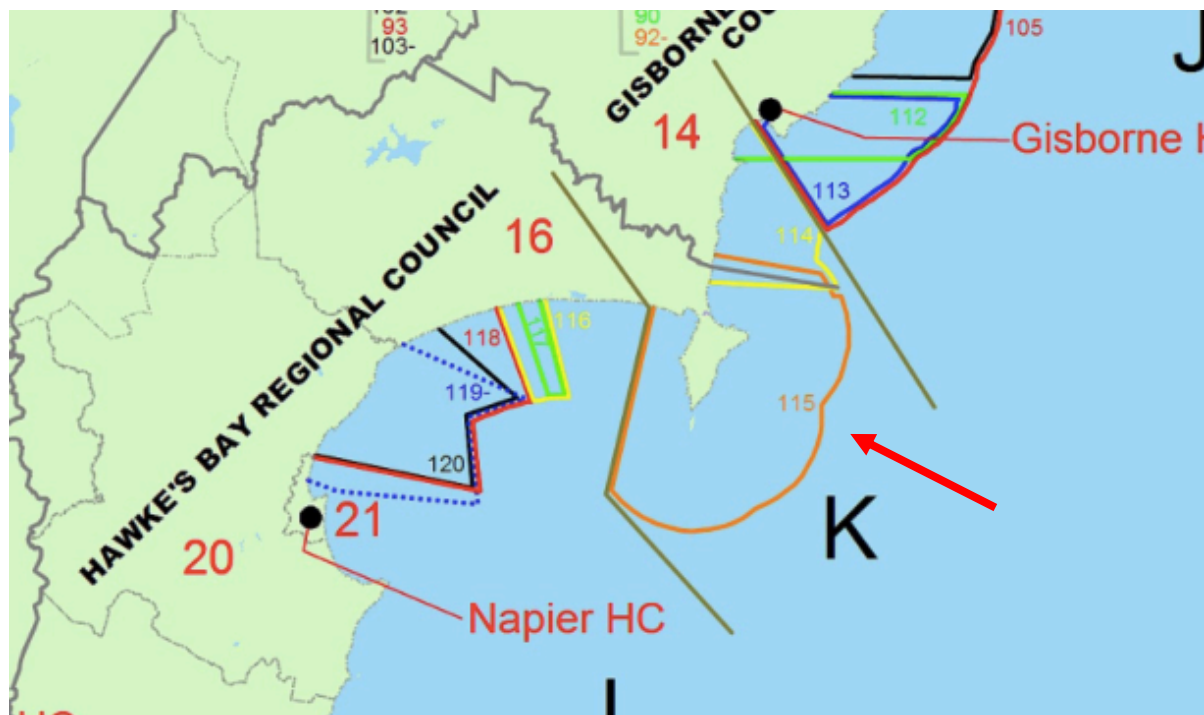


Tangiora CIV-2011-485-794 (Rongomaiwahine Iwi Trust) – see [HERE](#)

This group is applying for protected customary rights, customary marine title and the recognition of wahi tapu protection rights in relation to the customary marine title order.

This application is ***adjourned*** while negotiations with the Crown are occurring and a second case management conference has been scheduled in Gisborne on 17 June 2019.

They are applying to claim the Mahia Peninsula in the Hawkes Bay area. It can be seen as K 115 in orange on the map below. There are 3 overlaps for this claim (including the two National applications that are claiming the whole coastline).

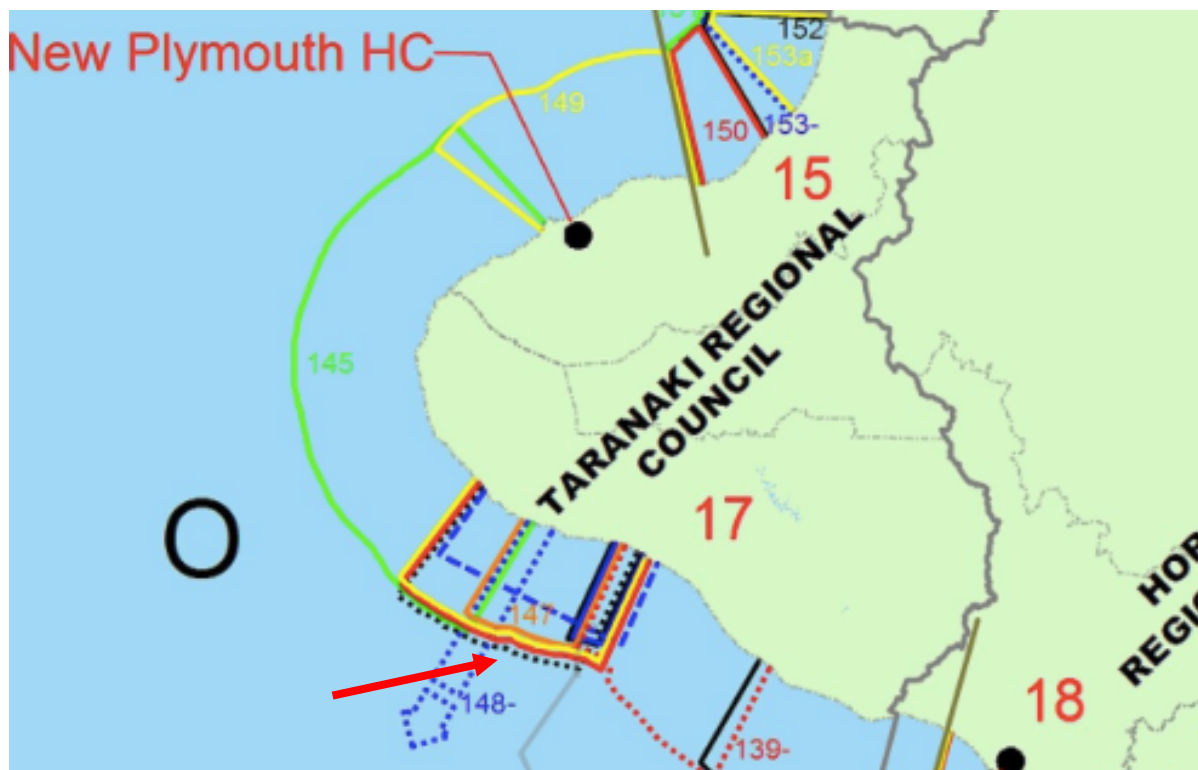


Robinson CIV-2011-485-797 (Ngati Manuhiakai) – see [HERE](#)

This claim was lodged under the Foreshore and Seabed Act 2004. It was transferred to the High Court for determination under the Marine and Coastal Area Act 2011. On 28th September 2018 the applicant filed a memoranda seeking an ***adjournment*** of a period of 24 months in order to pursue engagement with the Crown. The Attorney-General did not have an objection to this extension. The group is applying for protected customary rights (a customary rights order).

The rights they would be applying for are the exercise of kaitiakitanga including karakia, manawhenua (territorial rights), conservation of resources, use of the waka and other vessels, and resource extraction including (but not limited to): sand, peat, driftwood, whitebait, aquaculture, stones, gravel, pumice and kokowai (burnt red clay).

The Robinson claim is in the Taranaki area by Hawera and can be seen as O 147 in orange on the map below. There are 9 overlapping applications in this area.

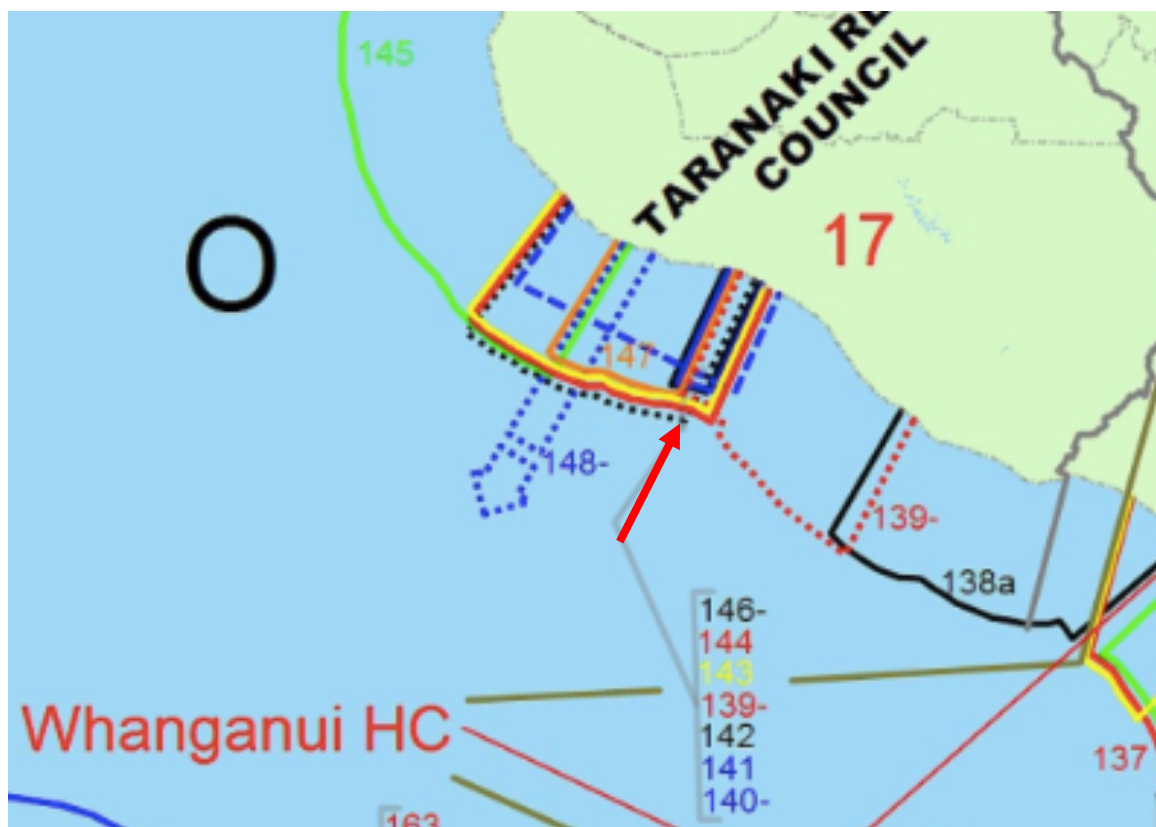


Brooks and Hooker CIV-2011-485-803 (Okahu Inuawai Hapu) – see [HERE](#)

This claim was also lodged under the Foreshore and Seabed Act 2004. It was transferred to the High Court for determination under the Marine and Coastal Area Act 2011. On 28th September 2018 the applicant filed a memoranda seeking an ***adjournment*** of a period of 24 months in order to pursue engagement with the Crown. The Attorney-General did not have an objection to this extension. They are applying for protected customary rights (a customary rights order).

The rights they would be applying for are also the exercise of kaitiakitanga including karakia, manawhenua, conservation of resources, use of the waka and other vessels, and resource extraction including (but not limited to): sand, peat, driftwood, whitebait, aquaculture, stones, gravel, pumice and kokowai. Also, the protection of wahi tapu and taonga.

This claim is right next to the Ngati Manuhiakai claim from above in the Taranaki area by Patea, it can be seen as a very small area in blue (solid line) – O 141. There are 9 overlaps for this claim.

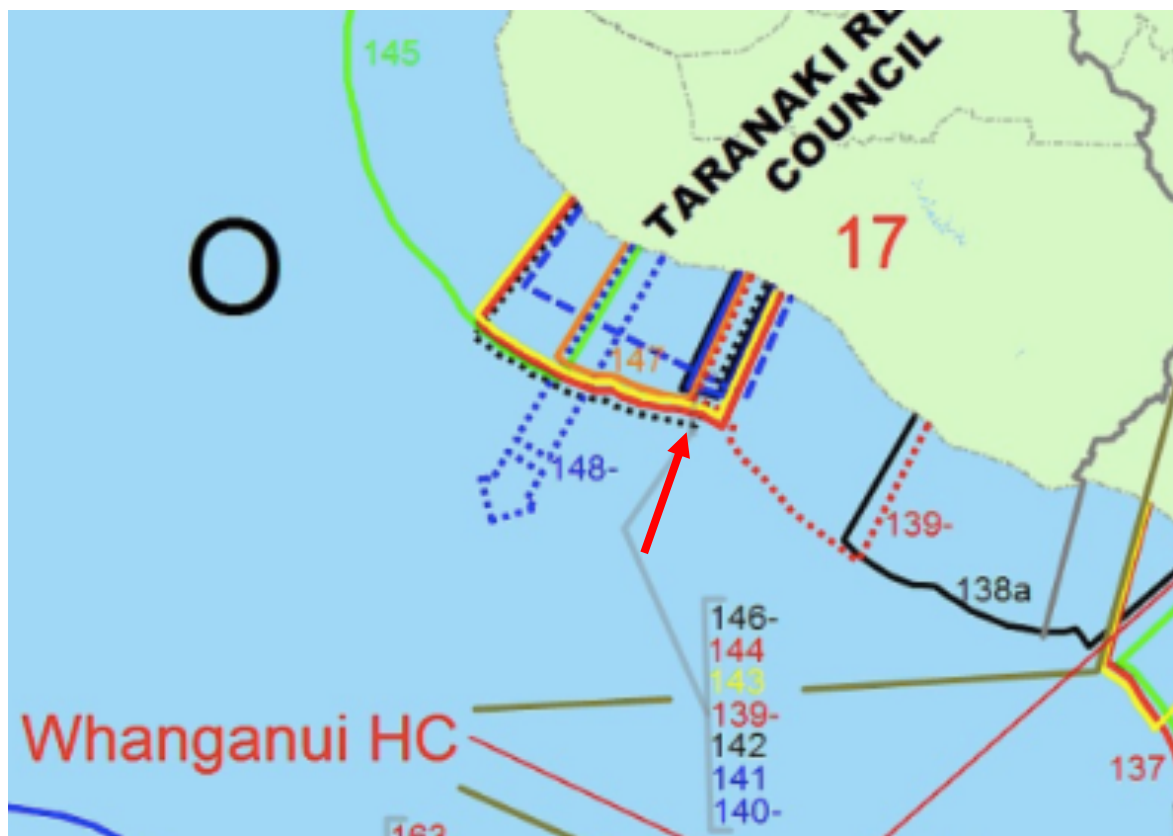


Noble CIV-2011-485-814 (Kanihi Umutahi Hapu) – see [HERE](#)

This claim was also lodged under the Foreshore and Seabed Act 2004. It was transferred to the High Court for determination under the Marine and Coastal Area Act 2011. On 1st October 2018 the applicant filed a memoranda seeking an ***adjournment*** of a period of 24 months in order to pursue engagement with the Crown. The Attorney-General did not have an objection to this extension. They are applying for protected customary rights (a customary rights order).

The rights they would be applying for are also the exercise of kaitiakitanga including karakia, manawhenua, conservation of resources, use of the waka and other vessels, and resource extraction including (but not limited to): sand, peat, driftwood, whitebait, aquaculture and fish/kaimoana.

This claim essentially completely overlaps the Okahu Inuawai Hapu claim above, also in the Taranaki region by Patea. It can be seen as the black solid line – O 142. There are also 9 overlaps for this claim.



Edwards, CIV-2011-485-817 (Whakatohea) – see [HERE](#)

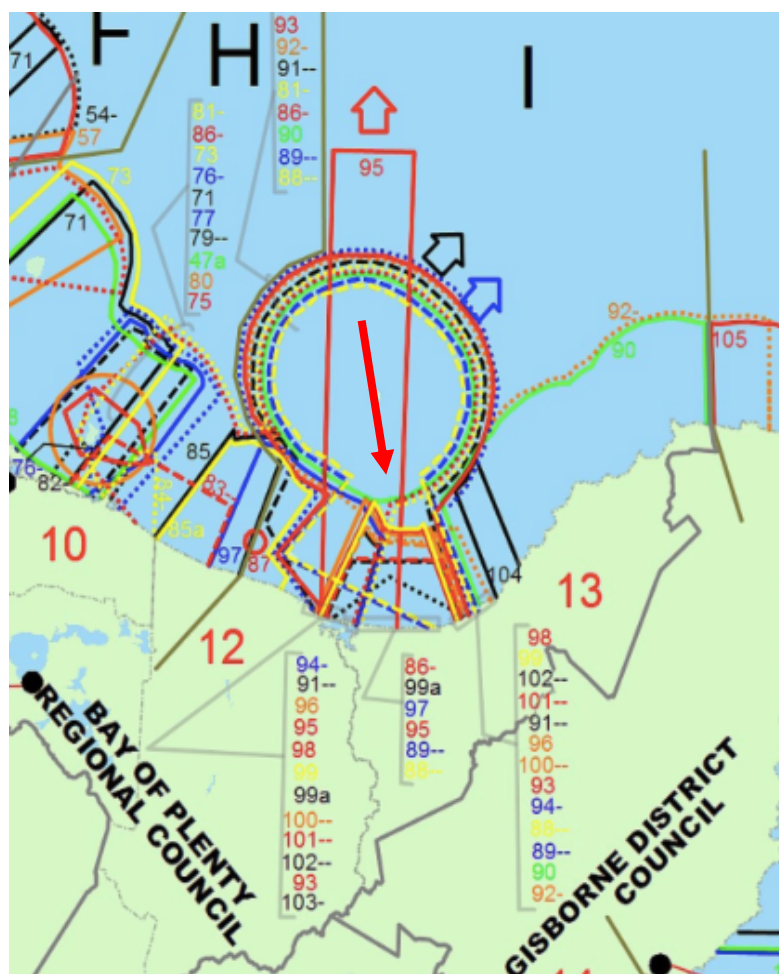
This is an application for customary marine title and protected customary rights.

The first case management conference was resumed in Rotorua on 26 October 2018 after being adjourned back in June 2018 due to a change of counsel for this claim. They had not received the new case files with sufficient time to prepare.

A Minute has just been released by Justice Collins with a new timetable of events. A second case management conference has been scheduled for **19 June 2019**. Interested parties who are not applicants are invited to participate, so their evidence is to be filed and served by **2 December 2019**. A hearing date is allocated to commence on **17 August 2020**.

The activities, uses and practices that this group are seeking a customary rights order for include: harvesting kaimoana, fishing, exercising kaitiakitanga, exercise of mana motuhake and rangatiratanga, use of resources for medicinal and healing purposes, and resource extraction – shells/fossils, wood, bones, sulphur, seaweed, stones and sand.

This is another extremely busy area for claim applications, there are 20 overlapping claims! It is difficult to differentiate all the different claims, but the Edwards one is in the Whakatane/Opotiki area and can be seen as a solid orange line – I 96.



Taylor & others, CIV-2011-485-821 (Ngati Pahauwera) – see [HERE](#)

This is an application for customary marine title, wahi tapu protection and protected customary rights.

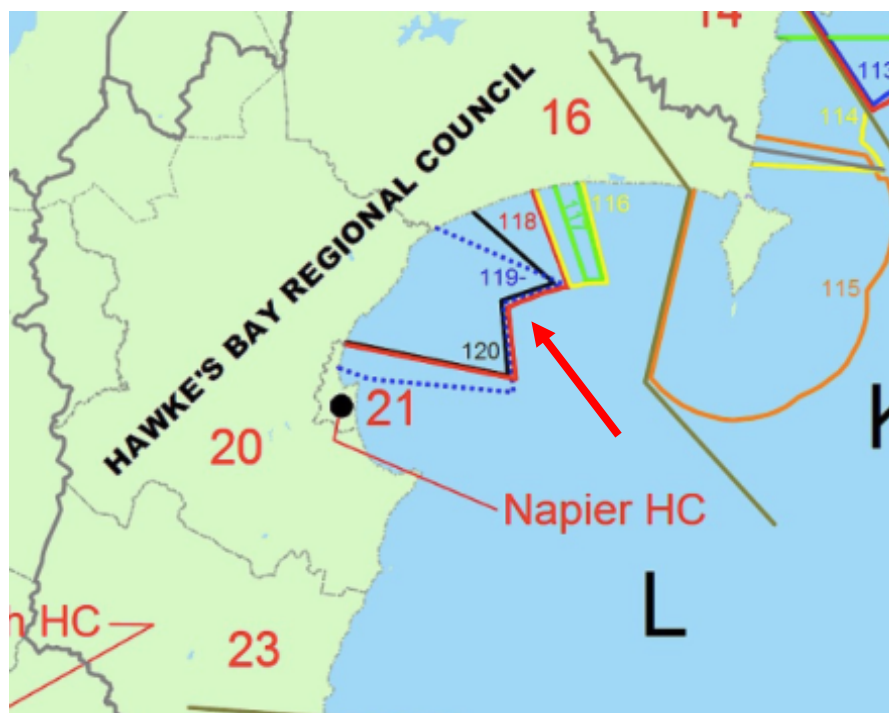
The second case management conference has been set for 4 February 2019 in Napier.

There is a bit of background to this claim. Ngati Pahauwera have already negotiated a customary marine title through the Crown Engagement pathway. Under the Minister at the time, Chris Finlayson, they were given a small portion of the coast in the Hawkes Bay. Not being happy with the reduced area that they were awarded, they are attempting to win rights to their whole claimed area through the High Court.

In a bizarre twist, the area of coastline that they have been awarded customary title to, was used as a public road for almost 100 years, before the inland roads were established in the 1930's, making a mockery of the requirement that the tribal group must have had "exclusive" use of the area since 1840. You can read more about this claim [HERE](#).

The rights they are now claiming through the High Court would enable them to: take, utilise, gather, manage and/or preserve all natural and physical resources including – sand, stones gravel, pumice, driftwood, kokowai, inanga (whitebait) and kokopu (fish/eel). Also Tauranga waka, managing travel routes and using the application area as a place to demonstrate manaakitanga to visitors and tourists. They would also have a wahi tapu over the area after a death, a prohibition on polluting, littering and over-exploitation of resources.

This claim is just above Napier in the Hawkes Bay and can be seen as a solid red line – L 118. There are 5 overlaps here.



As mentioned, those were High Court applications.

Priority claims have also been identified in the Crown Engagement Process. These are nine applications where a commitment to negotiate had been made by the previous Minister before 2017. Other applicants covering the same areas may be contacted as well. The priority claims are:

- **Te Whanau a Apanui (MAC-01-07-30)** – see [HERE](#) (scroll down)
They are claiming the area from Puketapu to Orongoihunui to Tokata (Whitianga Bay) in the *Bay of Plenty*.
- **Ngati Koata (MAC-01-12-07)** – see [HERE](#) (scroll down)
They are claiming the area surrounding D’Urville Island at the top of the *South Island*.
- **Te Uri o Hau (MAC-01-01-143)** - see [HERE](#) (scroll right down)
They are claiming the areas in *Northland* from Te Arai Point to Langs Beach (to 12 nautical miles) and the northern part of Kaipara Harbour from Karaka Point to midway between the harbour mouth (to 12 nautical miles) north and then back to the coast at Mahuta Gap.
- **Te Korowai o Ngaruahine (MAC-01-10-17)** – see [HERE](#) (scroll down)
They are claiming the area between the Taungatara and Waihi Rivers in *Taranaki*.
- **Rongomaiwahine (MAC-01-09-20)** – see [HERE](#) (scroll down)
They are claiming the area between Paritu and the mouth of the Nuhaka River including area surrounding Te Mahia Peninsula in the *Hawke’s Bay*.
- **Nga hapu o Ngati Porou** – see [HERE](#)
They are claiming the area from Potikirua to Koutunui Point, then Mawhai Point to Marau Point, and Pouawa River to Te Toka a Taiau in the *Gisborne* area (for a map and more information about the Ngati Porou claim refer to [HERE](#)).
- **Ngati Pahauwera (MAC-01-09-14 & MAC-01-09-15)** – see [HERE](#) (scroll down)
They are claiming the areas from Poututu Stream to Ponui Stream, and between Ponui Stream and Esk River in the *Hawke’s Bay* (for a lot more information about the **Ngati Pahauwera** and the **Nga hapu o Ngati Porou** claims you can also refer to the Ministry of Justice website [HERE](#)).
- **Taumata B** – see [HERE](#)
They are claiming a number of different areas around the Auckland region.
- **Ngati Porou ki Hauraki (MAC-01-03-07)** – see [HERE](#) (scroll down)
They are claiming Harataunga/Kennedy Bay and Mataora in the *Waikato* region.

Map of all priority claims

Have a look at the map below to get a general idea of where all of the priority claim areas are around New Zealand (note that in a couple of the cases the group has priority applications with both the High Court and the Crown, or have since decided to pursue engagement with the Crown instead). Also remember that overlapping claims in all these cases will also be involved. As noted on the map, the priority claims through the High Court are in red and the priority claims lodged with the Crown directly are in blue.



So what can I possibly do to help?

We have two groups that have put in applications to oppose all the claims (CORANZ and Landowners' Coalition). The hope is that when our day in court comes, we will have a number of affidavits opposing each claim provided by people who live in these areas. We are also hoping to make contact with people who can assist in researching the history of these claimed areas in order to show that the claimants cannot have held the area "exclusively" since 1840.

If you have an interest in early NZ history and would like to help, please email Katrina Jensen on katrina@nzcpr.com and let us know.

And if you would like to provide us with your evidence for your local area of coast, Katrina can send you more information and an evidence document template.

You can also assist by spreading the word about the claims through writing letters to the editor, writing to MP's, posting on social media and generally trying to inform people about what is occurring. Contact details can be found on the NZCPR website [HERE](#).

Finally, the New Zealand Centre for Political Research, which has been leading the fight against opportunist tribal claims to the coast, has developed a campaign page [HERE](#) – and continues to provide updated information of the status of the claims process. You can register for the NZCPR's free weekly newsletter [HERE](#).

Please feel free to contact us with any questions or suggestions – we do hope you will be able to help.

Katrina Jensen
Coastal Claims Project Manager
November 2018